IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6471 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAYANTIBHAI BHIKHABHAI VANOL

Versus

SUPERINTENDENT

Appearance:

MR KANUBHAI I PATEL for the Petitioner.

MR HARESH J TRIVEDI for the Respondents.

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 13/08/2004

ORAL JUDGEMENT

The petitioner has preferred present petition under Article 226 of the Constitution of India because of inaction on the part of the respondent

authority by not renewing the passport of the petitioner.

2. The learned counsel for the petitioner submitted that the petitioner was already passport holder bearing passport no. A-704271 issued by the respondent authority on 30th May, 1991. Upon expiry of the same, the petitioner applied for the renewal/fresh issuance of the passport and made an application for the same to the respondent authority. The respondent authority has been approached several times, but the passport has not been renewed/issued by the respondent authority. Ultimately, it is conveyed by the respondent authority to the petitioner that certain criminal cases are pending against the petitioner and so the petitioner's passport cannot be renewed/issued. It is also submitted by the learned counsel for the petitioner that the cases which are pending against the petitioner before the trial court are very trifle in nature and no such offence has ever been committed by the petitioner. The said offences have not been converted into conviction. Looking to the nature of the offences, nothing is much objectionable against the petitioner for renewal of the passport or issuance of the new passport, especially when there is no adverse police report.

3. Learned Additional Central Government Standing Counsel Mr. Trivedi appearing for the respondents submitted that the respondent authority has not renewed/issued the passport of the petitioner in pursuance of section 6(2)(f) of the Passport Act, 1967, especially when the Central Government has issued notifications dated 16th August, 1979 and 25th August, 1979. Criminal cases have been registered against the petitioner before Ellisbridge Police station, Ahmedabad and the said cases are pending before the trial court and therefore, there is no breach of public duty by the respondent. Hence, this petition deserves to be dismissed.

4. The learned counsel for the petitioner has relied upon the judgment delivered by this Court in the case of Dhiren Baxi vs. Regional Passport Officer, reported in 23(1) GLH, page-1, wherein para-10 inter alia provides as under:

"Considering the aforesaid notification issued by the Central Government, as well as considering the judgment of the Bombay High Court, in my view, this petition is required to be allowed by giving opportunity to the petitioner to approach the concerned Magistrate with an appropriate application for permitting him to go

abroad for a particular time limit. If the concerned Magistrate permits the petitioner to go abroad for a particular period on the basis of such order, it will be open for the petitioner to request the Passport Authority to grant him passport for a limited period during which he is permitted to go abroad. The petitioner may accordingly approach the concerned Criminal Court, with a prayer to permit him to go abroad and if any such application is preferred, the concerned Criminal Court may decide such application in accordance with law. If the concerned Criminal Court, before whom the criminal cases are pending, permits the petitioner to go abroad, the Passport Authority may pass appropriate order in the matter of issuing passport to the petitioner in terms of the order of the Criminal Court and subject to the conditions laid down by the Notification. As observed by the Bombay High Court, the Passport Authority, in future cases of a similar nature, may inform the applicants, against whom any criminal case is pending about the Notification of the Central Government and may inform such applicants that they may approach the concerned Criminal Court for permitting such applicant to go abroad and if any such order is passed by the Magistrate, permitting such applicant to go abroad, the Passport Authority may dispose of such applications in view of the Notification and in view of the provisions of the Passport Act. It is clarified that in case the Criminal Court permits the petitioner to go abroad, the Passport Authority shall act on the basis of such report for the purpose of issuing passport. The passport may not be refused solely on the ground of pendency of the present criminal cases in case the Magistrate to permits. It is clarified that if there are other grounds available to the passport authority to refuse the passport, it is for the authority to consider the same in accordance with law. The passport may not be refused solely relying on the present criminal cases, which are pending against the petitioner, in case permission is granted by the Magistrate, as indicated above. It is also clarified that whether such application should be granted or not is within the jurisdiction of the competent Criminal Court and it is for the concerned Magistrate to decide such application, if at all the same is received from the present petitioner and it is for the Magistrate to decide the same in accordance with law and this Court has not expressed any opinion on the aforesaid subject."

5. In view of the aforesaid procedure evolved by this Court for getting passport or renewal thereof, the petitioner is hereby directed to approach

the competent Criminal Court for permission to leave India. If such an application is moved by the petitioner before the trial court, the trial court shall decide the same in accordance with law, as early as possible and practicable and preferably within a period of two weeks from the date of such application. If the trial court grants permission to the petitioner to leave India, then in such a situation, the respondent authority shall issue passport to the petitioner for the period for which the petitioner is allowed to leave India, within a period of two weeks from the date of receipt of certified copy of the order of the trial Court. Rule made absolute accordingly with no order as to costs.

(D.N.Patel,J)

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